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THE CONTROVERSY BETWEEN IRAN AND AFGHANISTAN
OVER THE HELMAND RIVER WATERS

SUPPLEMENT

THE LOCATION OF THE POINT OF MEASUREMENT
OF THE WATERS ENTERING SISTAN

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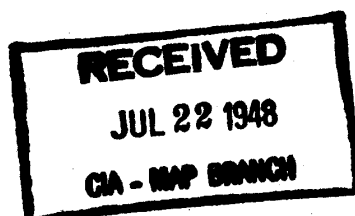
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OIR Report No. 4509S

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SUMMARY

Analysis of all available material and information leads to the following conclusions:

1. The point clearly intended in the McMahon Award of 1905 as that farthest upstream where the Helmand waters were to be measured for division between Iran and Afghanistan is Bandar-i-Kamal Khan ($30^{\circ}18'N$, $61^{\circ}53'E$), 35 miles upstream from Band-i-Kohak (or Band-i-Sistan).

2. The names Band-i-Kamal Khan and Bandar-i-Kamal Khan have been used interchangeably for the point 35 miles upstream from Band-i-Kohak.

3. Although the McMahon Award was protested by the Iranian Government, Bandar-i-Kamal Khan was in fact accepted by that government up until 1947 as the point where the measuring of the waters was carried out.

4. Wherever else may be the place called Band-i-Kamal Khan which the Iranians allege is the proper point for the measurement, it is not where it has been placed on a map transmitted by the Iranian Government to the American Embassy, Tehran, in December 1947.

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I. INTRODUCTION

It was noted in OIR Report No. 4509, The Controversy between Iran and Afghanistan over the Helmand River Waters,¹ that there were conflicting views on the exact location of the place called Bandar-i-Kamal Khan, established in the McMahon Award of 1905 as the point for the measurement of the flow of the Helmand waters, prior to their division between Iranian and Afghan Sistan. Since that report was issued, additional information and documents from both the Iranian and Afghan Governments have become available for study,² making it possible to locate Bandar-i-Kamal Khan with more assurance.

The location of the point at which the Helmand waters should be measured became a major issue when the members of the joint Iranian-Afghan Commission assembled in August 1947 to measure the flow of the river, as they had done in past years.³ In the summer of 1947 the flow of the Helmand into Sistan was reduced to a trickle, primarily because of two successive winters of light snowfall. The Iranians, however, attributed the low water to increased diversion by the Afghans following the construction of new irrigation works along the middle course of the Helmand, and their resentment against Afghanistan reached a high pitch.

The Iranian Government had previously made several unsuccessful attempts to raise and examine its charges of abnormal upstream diversions by the Afghans. When the joint commission assembled in August, the Iranian representatives were apparently instructed to

1. October 24, 1947 [] p. 16, footnote 1.

2. See Appendix.

3. A joint commission has met irregularly since 1905, presumably in accordance with the provisions of the McMahon award and of subsequent agreements concluded between the two countries, especially that of January 26, 1939 (See OIR-4509, op.cit., Appendix E).

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press for a survey of the Helmand as far unstream as possible,¹ and in this connection raised the argument that the place where the measurement of the Helmand waters should be made was not Bandar-i-Kamal Khan, 35 miles above Band-i-Kohak, but a place called Band-i-Kamal Khan located farther up the river. When the Afghan representatives refused to accept this claim, the commission disbanded.

In attempting to establish the location of the point of measurement, reference has been made to the history of the various awards and agreements regarding the Helmand, the texts of the documents themselves, geographic and cartographic evidence, and past practice by Iranian and Afghan authorities.

II. THE SISTAN ARBITRATION, 1872

The arbitral opinion rendered by Sir Frederic Goldsmid in 1872 laid down the boundaries of Afghanistan and Iran in the Sistan area and provided in conclusion that "it is, moreover, to be well understood that no works are to be carried out on either side calculated to interfere with the requisite supply of water for irrigation on the banks of the Helmand."² Goldsmid did not establish a procedure for executing this understanding. However, his diary indicates that during his survey of the Sistan area he did not proceed up the Helmand beyond Chahar Burjak, about ten miles upstream from Bandar-i-Kamal Khan,³ which lends weight to the assumption that his arbitral opinion referred only to the Helmand waters as they reached Sistan, i.e. in the neighborhood of Bandar-i-Kamal Khan.⁴

1. This assumption is strengthened by the fact that an unofficial member of the Iranian delegation eluded the Afghan frontier guard and rode off independently up the Helmand. D-346, Kabul, October 16, 1947, [redacted]

2. See OIR-4509, op.cit., Appendix A.

3. Majors St. John, Lovett, and Euan Smith, Eastern Persia: An Account of the Journeys of the Persian Boundary Commission, 1870-71-72 (2 vols., London, 1876), I, 286-92.

4. D-43, Kabul, April 6, 1948, [redacted]

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III. THE McMAHON AWARD, 1905

In his award of 1905, Sir Henry McMahon elaborated the Goldsmid opinion and laid down more specific principles for the division of the Helmand waters: "The amount of water requisite for irrigation of Persian land irrigable from and below Band-i-Kohak (i.e. the point at which the Perso-Afghan frontier leaves the Helmand river) is one-third of the whole volume of the Helmand river which enters Sistan. Sistan ... comprises all lands on both banks of the Helmand river from Bandar-i-Kamal Khan (35 miles upstream from the Band-i-Kohak) downwards."¹ "Persia is, therefore, entitled to one-third of the whole Helmand River calculated at the point where water is first taken off from it to irrigate lands on either bank situated at or below Bandar-i-Kamal Khan." These passages establish Bandar-i-Kamal Khan as the point where the Helmand waters are to be measured, and further locate Bandar-i-Kamal Khan as 35 miles upstream from Band-i-Kohak.

The McMahon Award in its entirety was accepted by Afghanistan, but that portion which related to the division of the Helmand waters was rejected by Iran. However, at various times between 1905 and 1947 the Iranian Government has acted as if it had accepted McMahon's decision. For example, it negotiated agreements with Afghanistan in 1936, 1937, and 1939 which incorporated the principles of the McMahon Award.

When the Iranian members of the joint commission argued in August 1947 that the McMahon Award established a measurement point much further upstream than Bandar-i-Kamal Khan, the Afghan Government replied: "There is no need of investigating the course of the

1. The parenthetical phrases appear in the original text of the award and were not added later. D-43, Kabul, April 6, 1948,

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Helmand, and that is why Band-i-Kamal Khan¹ was chosen as the distribution point.... There is no agreement that gives the Imperial Iranian Government the right to investigate the course of the Helmand....² To investigate the Helmand above Bandar-i-Kamal Khan, where the river debouches into the Sistan plain, would be to take up the question of the course of the river. Since there are no significant diversions of water from the river for many miles above Bandar-i-Kamal Khan, there seems to be no reason why McMahon would have selected a place farther upstream as the point of measurement.

IV. "BAND-I-KAMAL KHAN" AND "BANDAR-I-KAMAL KHAN"

It seems clear that Band-i-Kamal Khan and Bandar-i-Kamal Khan are used interchangeably as the place name for the same town. In Persian bandar means "port" and band means "dam". It is reasonable to suppose that before the destruction of the dam there (known as Band-i-Akwa) by the Mongols in the fourteenth century, the spot at the principal fork of the Helmand was known not only as the site of a dam, but as a river port.³ It is immaterial that half of the fork dried up immediately after the destruction of the dam and that the spot may have been known in the fourteenth century as Kamal Khan or by some other name. When it became known as Kamal Khan, it inherited the tradition of the dam and the port and was undoubtedly called locally by both names. The omission in various documents of the final ر (the Persian letter re) in بندر (Bandar), turning the word into بند (Band), could readily be an error in copying or the letter could have been arbitrarily omitted by someone who reasoned

1. The Afghan Government undoubtedly meant Bandar-i-Kamal Khan.

2. D-565, Tehran, December 9, 1947, Enc. 8,

3. Majors St. John, Lovett, and Euan Smith, op.cit., I, 286.

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that the use of the word "port" for a town in the desert was an obvious error made by someone else.

V. AFGHAN AND IRANIAN ACCEPTANCE OF BANDAR-I-KAMAL KHAN

When the Iranian Government in 1906 protested the McMahon Award,¹ it said: "Were we to divide into three parts all the arable lands watered by the Helmand River from Bandar-i-Kamal Khan down, - that is, the whole province of Sistan - we would see that two-thirds are situated in Iranian territory...." On that basis it claimed that the waters should be divided at points above Band-i-Kohak. They mentioned specifically Dek-i-Dela² and Rudbar,³ but made no mention at that time of Band-i-Kamal Khan.⁴

In 1939, Iran and Afghanistan negotiated an agreement for measuring and dividing the Helmand waters. Section 2 of the agreement states: "In order that from the village of Chahar Burjek to Band-i-Kamal Khan no water may be used in excess of the quantity of water now consumed, the Afghan Government agrees not to dig or construct any canal in addition to canals now running within the above distance."⁵ This clearly expressed Persian anxiety that Afghanistan might divert water from the flow between Chahar Burjek and "Band-i-Kamal Khan" before the division provided for in Section 1 at "Band-i-Kamal Khan" took place. Since any Afghan diversion after the division would be charged to the Afghan share, the Persians would have had no grounds for wanting the inclusion of Section 2. "Band-i-Kamal Khan" must then be located west, or downstream from

1. D-565, Tehran, December 9, 1947, Enc. 4b, [redacted]

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2. About two-thirds of the way from Band-i-Kohak to Bandar-i-Kamal Khan. It is perhaps a stream from that region which is mentioned in the proces-verbal as Nahr-e-Khabgah Dakeh Dileh.

3. Probably a place as far upstream from Bandar-i-Kamal Khan as the latter is above Band-i-Kohak.

4. Much confusion and heat generated in connection with this problem is due to the prevalence of names of places which are either identical or closely similar, e.g., Dust Muhammad Qaleh and Ziarat Dust Muhammad Qaleh; two Deh Dust Muhammads; Kamal Khan, Kamal Khan Qaleh, and Bandar-i-Kamal Khan. Further difficulty is caused by lack of precision and accuracy in naming and locating places.

5. D-565, Tehran, December 9, 1947, Enc. 5a (English) and 5b (Persian), [redacted] D-352, Kabul, November 1, 1947, Enc. 5, [redacted]

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Chahar Burjak (probably where Bandar-i-Kamal Khan is in fact located) rather than east and upstream from Chahar Burjak where "Band-i-Kamal Khan" has been written in on the official Iranian map transmitted to the American Embassy, Tehran, by the Iranian Foreign Office in December 1947.¹ If this explanation of the use of "Band" in the draft agreement is accepted, it also applies to the use of the same word in the communique issued at the conclusion of the negotiations. Furthermore, the Afghan-Iranian commission which has met in various years from 1905 to 1947 to measure the Helmand flow apparently never conducted measurements above Bandar-i-Kamal Khan.

VI. EXISTENCE OF "BAND-I-KAMAL KHAN"

The analysis in Section V above seems to indicate that "Band-i-Kamal Khan" should not in any case be located upstream from Chahar Burjak. According to Goldsmid's diary he did not proceed up the river beyond Chahar Burjak so he would not have visited "Band-i-Kamal Khan" had it existed further up the river, nor does he make any mention of a "Band-i-Kamal Khan" farther down the river.² The Survey of India map printed January 1926 gives the name of the village 35 miles above Band-i-Kohak as Band-i-Kamal Khan, but shows no place by the name of Bandar-i-Kamal Khan and no place further up the Helmand river by the name of Band-i-Kamal Khan. It thus seems clear that the Iranians are in error in seeking a "Band-i-Kamal Khan" further upstream than Bandar-i-Kamal Khan and that both the Afghans and the Iranians (except in the proces-verbal of August 1947) were in fact referring to one place, 35 miles upstream from Band-i-Kohak, when using Band-i-Kamal Khan or Bandar-i-Kamal Khan.

1. D-565, Tehran, December 9, 1947, Enc.,

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2. It may be pertinent to mention as a further indication of the unreliability of local maps the fact that on Section 30 of a series of Iranian maps (scale 1:1,000,000) on file in DRN, although Chahar Burjak and Qaleh-i-Fateh are shown, both Bandar-i-Kamal Khan and Band-i-Kamal Khan are omitted and the spot 35 miles upstream from Band-i-Kohak, across the river from Bandar-i-Kamal Khan, is marked Deh Ghulam Haidar Khan.

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This conclusion throws further light upon the Iranian claim enunciated in the joint proces-verbal of August 12, 1947 drawn up to summarize the activities of the joint commission and presumably based upon Section 3 of the draft agreement of 1939 which reads:

"The authorized officials ... will determine jointly each year the quantity of water reaching Band-i-Kamal¹ Khan in the autumn season, and will fix the quantity of water to be taken by each party by canals from Band-i-Kamal Khan to Sikhsar² to be counted equally in the shares of both sides."³ The Iranians claimed that no measuring had been done in the past at Bandar-i-Kamal Khan, but that it had been done at Qaleh Fath,⁴ Chahar Burjak, and as far as Band-i-Khan.⁵ The statement regarding Bandar-i-Kamal Khan seems to be in error, although in the absence of documents recording past divisions, it is impossible to check the accuracy of the rest of the statement. The Iranians stated that the measurement should be made at Band-i-Kamal Khan which they believed, from the context of the proces-verbal, to be situated somewhere above the Chahar Burjak stream⁶ and that, since all of the places named are part of the Chakhansur district, they should be considered in the division. Since Qaleh-i-Fateh lies below Bandar-i-Kamal Khan, the Iranians were correct in claiming that measurements should be made there. They were, however, incorrect in claiming the same for Chahar Burjak

1. In view of the above discussion, "Band-i-Kamal Khan" should be read "Bandar-i-Kamal Khan".

2. The Sikhsar region is approximately as far north of Band-i-Kohak as Bandar-i-Kamal Khan is to the south.

3. OIR-4509, op.cit., Appendix E.

4. Qaleh-i-Fateh on the map in OIR-4509, op.cit.

5. Band-i-Khan may be Band-i-Kamal Khan, said to be a weir about 35 kilometers above Bandar-i-Kamal Khan, hence above Chahar Burjak. (T-1065, Tehran, November 1, 1947, [redacted])

6. Twenty-six miles above the village of Chahar Burjak (D-346, Kabul, October 16, 1947 [redacted])

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and Band-i-Khan, both of which lie presumably above Bandar-i-Kamal Khan.¹

1. The Afghans stated in the proces-verbal that in the past measurements had been made at Bandar-i-Kamal Khan which lies across the river (presumably opposite) the village of Dost Muhammad Khan. If this refers to the village of Deh Dost Muhammad Khan (appearing on the map in OIR-4509, op.cit.) it is very odd because that village lies in fact less than halfway from Band-i-Kohak to Bandar-i-Kamal Khan.

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APPENDIX

The analysis of the location of the point at which the waters of the Helmand are to be measured is based on:

1. Persian texts and English translations of various official documents provided by the Afghan Ministry of Foreign Affairs and transmitted to the Department under cover of Despatch No. 352 from the American Legation, Kabul, dated November 1, 1947, [redacted]

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2. Persian texts and English translations of various official documents provided by the Iranian Ministry of Foreign Affairs and transmitted to the Department under cover of Despatch No. 565 from the American Embassy, Tehran, dated December 9, 1947, [redacted]

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In these documents the following references are made either to Bandar-i-Kamal Khan or Band-i-Kamal Khan:

1. Section c of Paragraph 9 of the preamble of the McMahon Award, dated April 10, 1905,¹ reads in both Persian texts and both English translations: "It has been clearly ascertained that one-third of the water which now reaches Sistan at Bandar-i-Kamal Khan would amply suffice for the proper irrigation of all existing cultivation in Persian Sistan ..."

2. Clause 2 of the Award proper reads: "Sistan ... comprises all lands on both sides of the Helmand from Bandar-i-Kamal Khan downwards." This name appears in both English translations and in the Persian text from Tehran, although the name is given as "Band" in the Persian text from Kabul.²

3. Clause 3 of the Award proper reads: "Persia is, therefore, entitled to one-third of the whole Helmand river calculated at the point where water is first taken off from it to irrigate lands on either bank situated at or below Bandar-i-Kamal Khan." The Persian and the English texts from Kabul give the name as above, but the Persian and English texts from Tehran read "Band".³

4. In a letter dated January 16, 1906 from the Persian Foreign Office to the British Legation protesting the McMahon Award, the Persian text and the English translation both use Bandar-i-Kamal Khan.⁴

5. In a short agreement in Persian signed by the Afghan and Iranian representatives in August 1936, Bandar-i-Kamal Khan is used.⁵

6. In a short-term contract signed by the two Governments in October 1936, the name "Band" is used. In one of the two cases where it is written, the letter "r" was typed, but then crossed off.⁶

7. In a draft contract dated 8 Jaddi, 1317 (January 26, 1939), the Persian texts from Tehran and Kabul and the English translation

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from Tehran (there is no English translation from Kabul) use "Band". The word "Band" is translated "dam" in the English version.¹

8. In the communique of January 26, 1939 relating to the draft contract, the word "Band" is used in both Persian texts. No English translation was forwarded from Kabul and in the English version forwarded from Tehran "Band" has been rendered by its English equivalent "dam".²

9. In a telegram from the Iranian Embassy, Kabul, to the Iranian Foreign Office, Tehran, dated July 27, 1947, the word in the Persian and English texts is "Band".³

10. In another telegram from the Iranian Embassy, Kabul, to the Iranian Foreign Office, Tehran, dated December 9, 1947, the word in both Persian and English texts is "Band".⁴

11. In the joint proces-verbal signed by the Iranian and Afghan members of the Helmand waters commission on August 12, 1947, the Persian and English versions report the Afghans as claiming Bandar-i-Kamal Khan as the spot designated for measuring the waters of the Helmand, whereas the Iranians claimed Band-i-Kamal Khan as the correct place.⁵

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